

ORIGINAL

DANNY FABRICANT 84828-012  
3901 Klein Blvd Suite J  
Lompoc CA 93436-2706

FILED

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

Related  
DDJ

Plaintiff appearing pro se

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANNY FABRICANT,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Case No. CV 19-

DMG(JDE) 7.1

CV19-9081-6

RECEIVED

10-11-19  
CS

COMPLAINT FOR INJUNCTIVE RELIEF

JURISDICTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552(a) ("FOIA"). Plaintiff Danny Fabricant seeks injunctive and other appropriate relief that will cause the release of documents and records sought in 15 separate FOIA requests, made between 11/20/2016 and 3/20/2017.

2. This Court has subject matter and personal jurisdiction per 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff is a Federal prisoner serving life sentences at the United States Penitentiary-Lompoc, within the Central District of California.

#### PARTIES

4. Plaintiff is a Federal Prisoner serving Life sentences in the United States Penitentiary-Lompoc. That prison is located within the Central District of California. Plaintiff was sentenced to his Life sentences by the District Court for the Central District of California in CR 03-1257 RSWL, in December, 2009, after a retrial.

5. Defendant Department of Justice ("DOJ") is the entity that promulgates and enforces the regulations and procedures of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). The ATF is a departmental component of the DOJ. Defendant DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1).

#### HISTORICAL FACTS

6. On or about 11/20/2016, Plaintiff mailed the ATF's Disclosure Division eleven different FOIA Requests, seeking the below described documents. Receiving no acknowledgment letters within the time prescribed by law, on or about 12/28/2016, Plaintiff mailed the ATF Duplicate Originals of the eleven Requests. Ten (10) of those Requests were assigned the below indicated Identifying numbers. The 11th Request was not assigned a number nor acknowledged.

a. " .: from Los Angeles Office ATF Investigation number 784015-02-0006; [¶] All documents which mention or relate to every item booked into evidence during this investigation. (App'x. I, p. 1). The Request was assigned number 2017-0296 by letter dated 2/14/2017 (App'x. pp. 2-3). This Request will hereafter be referred to as "0296."

b. " .. from Los Angeles Office ATF Investigation number 784015-03-0006; [¶] All documents which mention, reference or contain any mention of 'CI-784000-376'" (App'x. I, p. 4). The Request was assigned number 2017-0297 by letter dated 2/14/2017 (App'x. I, pp. 5-6). This Request will hereafter be referred to as "0297."

c. " .. from Los Angeles Office ATF Investigation number 784010-05-0050; [¶] All documents which mention or relate to every item booked into evidence during this investigation" (App'x. I, p. 7). The Request was assigned number 2017-0298 by letter dated 2/14/2017 (App'x. I, pp. 8-9). This Request will hereafter be referred to as "0298."

d. " .. from Phoenix, AZ Office ATF Investigation number 785040-02-0049; [¶] All documents which mention or relate [to] the analysis of any controlled substance booked into evidence during this investigation, This Request includes documents related to transporting or shipping the controlled substances to and from the DEA testing laboratory" (App'x. I, p. 10). The Request was assigned number 2017-0299 by letter dated 2/14/2017 (App'x. I, pp. 11-12). This Request will hereafter be referred to as "0299."

e. " .. from Los Angeles Office ATF Investigation number 784015-03-0055; [¶] All documents which mention, reference or contain any mention of 'CI-784000-376'" (App'x. I, p. 13). The Request was assigned number 2017-0300 by letter dated 2/14/2017 (App'x. I, pp. 14-15). This Request will hereafter be referred to as "0300."

f. " .. from Phoenix, AZ Office ATF Investigation number

785040-02-0049

785040-02-0049; [¶] All documents which mention or relate to every item booked into evidence during this investigation" (App'x. I, p. 16). The Request was assigned number 2017-0301 by letter dated 2/14/2017 (App'x. I, pp. 17-18). This Request will hereafter be referred to as "0301."

g. " .. from Los Angeles Office ATF Investigation number 784015-02-0006; [¶] All documents which mention or relate [to] the analysis of any controlled substance booked into evidence during this investigation. This Request includes documents related to transporting or shipping the controlled substances to and from the DEA testing laboratory" (App'x. I, p. 19). The Request was assigned number 2017-0302 by letter dated 2/14/2017 (App'x. I, pp. 20-21). This Request will hereafter be referred to as "0302."

h. " .. from Los Angeles Office ATF Investigation number 784010-05-0055; [¶] All documents which mention or relate [to] the analysis of any controlled substance booked into evidence during this investigation. This Request includes documents related to transporting or shipping the controlled substances to and from the DEA testing laboratory" (App'x. I, p. 22). The Request was assigned number 2017-0303 by letter dated 2/14/2017 (App'x. I, pp. 23-24). This Request will hereafter be referred to as "0303."

i. " .. from Los Angeles Office ATF Investigation number 784-015-03-0006; [¶] All documents which mention or relate to every item booked into evidence during this investigation" (App'x. I, p. 25). The Request was assigned number 2017-0304 by letter dated 2/14/2017 (App'x. I, pp. 26-27). This Request will hereafter be referred to as "0304."

j. " .. copies of all documents in the actual or constructive possession of your agency, which mention the identifier CI-784000-376"

(App'x. I, p. 28). The Request was assigned number 2017-0347 by letter dated 2/14/2017 (App'x. I, pp. 29-30). This Request will hereafter be referred to as "0347."

7. In the same envelope as the ten FOIA Requests listed in ¶ 6 above, another Request was submitted, which sought;

" .. from Los Angeles Office ATF Investigation number 784015-02-0006; [¶] All documents which mention, reference or contain any mention of 'CI-784000-376'" (App'x. I, p. 31). A Duplicate Original of that Request was submitted (along with Duplicate Originals of the ten Requests listed in ¶ 6, above) to the ATF's Disclosure Division. This Request was not responded to, along with the other ten.

8. On or about 1/16/2017, Plaintiff mailed the ATF's Disclosure Division a FOIA Request seeking;

" .. copies of all documents in the actual or constructive possession of your agency, which mention the identifier CI-784000-376" (App'x. I, p. 32). No acknowledgment letter (nor disclosure) was received.

9. On or about 2/26/2017, Plaintiff mailed the ATF's Disclosure Division a FOIA Request seeking;

"All ATF Press Releases, Bulletins, Notices, etc., issued by the Los Angeles Office and/or ATF Headquarters, between 2/01/2002 and 6/30/2002, whose subject matter pertained to car/vehicle Dealers/Dealerships and/or car/vehicle theft(s)" (App'x. I, p. 33). The Request was assigned number 2017-0568 by letter dated 4/18/2017 (App'x. I, p. 34). This Request will hereafter be referred to as "0568."



10. On or about 3/20/2017, Plaintiff mailed the ATF's Disclosure Division two FOIA Requests, seeking the below described documents;

a. "All documents, dated on or after 1/01/2010, which mention myself, in the actual or constructive possession of the ATF" (App'x. I, p. 35). The Request was assigned number 2017-0567 by letter dated 4/18/2017 (App'x. I, p. 36). This Request will hereafter be referred to as "0567."

b. "The current ATF 'Undercover Operations Manual" (App'x. I, p. 37). The Request was assigned number 2017-0572 by letter dated 4/14/2017 (App'x. I, p. 38). This Request will hereafter be referred to as "0572."

11. By letter to the Office of Information Policy ("OIP") dated 1/28/2019 (App'x I, pp. 39-41) [NOTE: The OIP is the entity to whom FOIA appeals are sent to be processed.], Plaintiff attempted to appeal the (then) approximately two-year delay in processing Requests 296, 297, 298, 299, 300, 301, 302, 303, 304 and 347. The letter (at part b.) also attempted to appeal from the summary denials of Requests 297, 300, 304 and 347, which Plaintiff had attempted to appeal from earlier, by letters to the OIP dated 3/06/2017 and 3/13/2017 (which OIP did not acknowledge, nor process). The 'appeal letter' pointed out that the ATF's acknowledgment letters all estimated that it would take "three to four months from the date of this letter to respond to your request[s]."

12. By letter dated 4/15/2019, the OIP responded to Plaintiff's 1/28/2019 'appeal letter' (App'x I, pp. 42-43). Per the letter (and footnotes) the OIP assigned case numbers DOJ-AP-2019-02378 through 02379 and 02381 through 02388, to the ten FOIA Requests that had

been assigned numbers by the ATF, in February and April, 2017. The OIP's response letter explained that "As no adverse determination has yet been made by ATF, there is no action for this Office to consider on appeal." (App'x. I, p. 42, 2nd ¶). The letter went on to explain "However, I can assure you that this Office has contacted ATF and has been advised that your request is currently being processed." (App'x I, p. 42, 3rd ¶). Footnote 2 of the OIP letter explains; "Please note that because the subject of this request is the same as that of several requests you submitted to ATF, this letter also addresses ATF's failure to respond to request numbers: 2017-0297, 2017-0298, 2017-0299, 2017-0230, 2017-0301, 2017-0302, 2017-0303, 2017-0304, and 2017-0347."

13. More than five months have passed since the OIP's 4/15/2019 letter was written. Plaintiff has received nothing from the ATF related to the 15 separate FOIA Requests described above, to date.

14. By letter to OIP dated 2/19/2019, Plaintiff sought their assistance in causing the ATF to "acknowledge and respond to these five (5) Requests[?]" The Requests being those above described in ¶¶ 7, 8, 9, 10(a) and 10(b) [Please see Docs. 21-28 (pp. 31-38) in App'x I] (App'x I, p. 44). To date, the OIP has not responded to that letter.

#### EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. As explained in the 4/15/2019 letter from the OIP, an appeal cannot be taken until there is an adverse decision from an Agency. In that the ATF has not yet made any decisions, there is nothing to appeal, yet. It has been more than two full years and the ATF has not made any adverse determinations.

#### CAUSE OF ACTION

##### WRONGFUL WITHHOLDING OF AGENCY RECORDS

##### IN VIOLATION OF THE PROVISIONS OF THE FOIA

16. Plaintiff repeats and re-alleges ¶¶ 1-15 above.

17. Defendant, from early 2017 through the below date, has wrongfully failed and refused to process some 15 separate FOIA Requests, or to release the documents sought, in those Requests.

18. Plaintiff is entitled to injunctive relief with respect to the release of the requested documents.

#### RELIEF REQUESTED

19. Plaintiff seeks;

(a) A Declaratory Judgment requiring Defendant to provide Plaintiff copies of all requested records and documents.

(b) Costs of suit, including but not limited to, administrative costs (copying and postage costs incurred in mailing of duplicate original documents to the ATF and the OIP) and costs of suit, to include the filing fee and copying and postage costs, per 5 U.S.C. § 552(a)(E)(i).

(c) Such other relief as the Court deems appropriate.

#### VERIFICATION


I declare under penalty of perjury that the foregoing is



true and correct.

Executed on the below date at the Federal Penitentiary, at  
Lompoc, CA.

Dated: Sept. 30, 2019

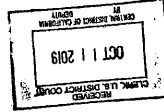


DANNY FABRICANT, Plaintiff

DANNY FABRICANT 84828-012  
United States Penitentiary  
3901 Klein Blvd Suite 7  
Lompoc CA 93436-2706

LEGAL MAIL

NEW FILING



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84828-012  
IN PAGE DOCKETING  
U.S. DISTRICT COURT  
255 E Temple St  
LOS Angeles, CA 90012-4565  
United States

